

EXHIBIT 12

MAO DECLARATION OPPOSITION TO GOOGLE'S MOTION TO EXCLUDE LASINSKI

**DOCUMENT SOUGHT TO BE
SEALED**

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

ANIBAL RODRIGUEZ, et al.,
Plaintiffs,

V.

Case No.

GOOGLE LLC,

3 : 20 - CV - 04688 - RS

Defendant.

HIGHLY CONFIDENTIAL -

ATTORNEYS' EYES ONLY

DONNA L. HOFFMAN, Ph.D.

Tuesday, July 11, 2023

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1	A.	Go ahead. Where were we?	13:19:21
2	Q.	Yeah, I'll just re-ask my	13:19:23
3		question.	13:19:25
4	A.	Thank you.	13:19:26
5	Q.	Are you aware of any	13:19:26
6		specific examples where an internet	13:19:28
7		company paid users for data?	13:19:30
8		MS. AGNOLUCCI: Object to scope.	13:19:33
9	A.	I'm sorry. Excuse me.	13:19:37
10		Something about your question is	13:19:50
11		triggering it. I just unplugged it. I'm	13:19:52
12		sorry.	13:19:55
13		The best way I can answer	13:19:56
14		that is that I've been studying online	13:19:58
15		consumer behavior, internet business	13:20:03
16		models and e-commerce since the mid '90s	13:20:05
17		and I am probably, you know, the -- I	13:20:09
18		know that has been hypothetically	13:20:11
19		proposed and it's possible it's been --	13:20:13
20		it's actually happened, but off the top	13:20:17
21		of my head, I can't give you any	13:20:19
22		examples.	13:20:21
23		BY MR. FRAWLEY:	13:20:21
24	Q.	Okay. You prepared an	13:20:39
25		expert report and served the expert	13:20:46

1 report in a case for Google against the 13:20:48
2 Arizona Attorney General; is that right? 13:20:51
3 A. Yes. 13:20:54
4 Q. Okay. Did you consult that 13:20:58
5 report in the process of preparing your 13:21:04
6 report in this case? 13:21:06
7 MS. AGNOLUCCI: Object to form. 13:21:07
8 A. I -- yes. 13:21:11
9 BY MR. FRAWLEY: 13:21:11
10 Q. Please elaborate on how you 13:21:15
11 consulted that report in the process of 13:21:17
12 preparing your report for this case. 13:21:18
13 A. That report concerned dark 13:21:20
14 patterns and I consulted a few of the 13:21:23
15 paragraphs relating to dark patterns. 13:21:26
16 Q. And did you copy any of 13:21:32
17 those paragraphs from that report into 13:21:34
18 this report? 13:21:36
19 A. No. 13:21:37
20 Q. So would it surprise you if 13:21:44
21 some of the material in your report for 13:21:47
22 this case is identical or almost 13:21:48
23 identical to the paragraphs from that 13:21:51
24 opinion? 13:21:53
25 A. No. 13:21:54

1 Q. Why wouldn't that surprise 13:21:55
2 you? 13:21:57
3 A. Well, because I have 13:21:58
4 opinions that I have formulated about 13:22:01
5 dark patterns, for example, that they are 13:22:03
6 a vague and nebulous construct. So it 13:22:06
7 wouldn't surprise me that might be in 13:22:09
8 both reports because there's only one way 13:22:11
9 to say that, and so it would not surprise 13:22:14
10 me that fragments or sentences here and 13:22:16
11 there of my own words have appeared in 13:22:20
12 same or similar structure in both 13:22:24
13 reports. I -- I mostly consulted the 13:22:26
14 previous report for some of the 13:22:32
15 references to the dark pattern 13:22:34
16 literature. 13:22:35
17 Q. Fair to say then that some 13:22:36
18 opinions you offer in that case at least 13:22:45
19 overlap with opinions you're offering in 13:22:48
20 this case? 13:22:50
21 MS. AGNOLUCCI: Object to form. 13:22:51
22 A. Yes. 13:22:52
23 BY MR. FRAWLEY: 13:22:52
24 Q. And is that why you 13:23:02
25 consulted that report in the process of 13:23:03

1	preparing this case's report?	13:23:06
2	A. No.	13:23:08
3	Q. Can you look at table 7 on	13:23:18
4	page 71 of your report in this case?	13:23:24
5	A. I'm there.	13:23:34
6	Q. Do you see the middle cell	13:23:38
7	in the table?	13:23:40
8	A. Yes.	13:23:42
9	Q. And do you see where you	13:23:44
10	wrote in the right column, middle cell,	13:23:45
11	middle row, "Mr. Schneier has not shown	13:23:47
12	why Google's settlement with the Arizona	13:23:59
13	Attorney General is relevant to this	13:24:01
14	case. The Arizona matter was specific to	13:24:03
15	Google's alleged location-tracking	13:24:07
16	practices, and is irrelevant to the	13:24:09
17	claims of this case"?	13:24:10
18	Do you see that?	13:24:12
19	A. I do.	13:24:13
20	Q. This Arizona case being	13:24:15
21	talked about in this cell is the case	13:24:17
22	where you offered an expert report,	13:24:20
23	correct?	13:24:22
24	A. Yes.	13:24:23
25	Q. And you admitted a moment	13:24:29

1 ago that you consulted that report in the 13:24:30
2 process of preparing your report in this 13:24:33
3 case, right? 13:24:35

4 A. Yes. As I testified, I went 13:24:37
5 to look up the references that I used for 13:24:39
6 the dark pattern literature, and then for 13:24:42
7 this report, I did additional research on 13:24:46
8 dark patterns. 13:24:50

9 Q. Did you use any of the 13:24:51
10 references from the Arizona -- from your 13:24:55
11 Arizona report in your report for this 13:24:57
12 case? 13:24:59

13 A. Yes. 13:24:59

14 Q. How can it be proper for an 13:25:05
15 expert to borrow material from a prior 13:25:08
16 report in a different case? 13:25:10

17 MS. AGNOLUCCI: Object to form. 13:25:13

18 A. I'm borrowing, to use your 13:25:16
19 term, academic literature, which is quite 13:25:19
20 common to cite the same papers in 13:25:23
21 subsequent work. So I'm -- I don't -- I 13:25:27
22 don't see the problem here. 13:25:33

23 BY MR. FRAWLEY: 13:25:33

24 Q. Can you help me understand 13:25:37
25 how you think it was proper to, again, my 13:25:38

1 words, borrow that material, even though 13:25:41
2 here in your report in this case on page 13:25:43
3 71, you're saying that that matter is 13:25:45
4 "irrelevant to the claims of this case"? 13:25:49
5 A. The material that I cited in 13:25:54
6 that report as well as this report refers 13:25:57
7 to the academic literature on dark 13:26:00
8 patterns. That is relevant -- that was 13:26:03
9 relevant in some aspects to that case and 13:26:06
10 that is relevant in some, yet different 13:26:10
11 aspects, in this case. In my mind, it's 13:26:13
12 entirely possible that the literature on 13:26:16
13 dark patterns could be relevant to dozens 13:26:19
14 of cases. And -- and I would be 13:26:22
15 required, if I was doing my job, to cite 13:26:27
16 the same papers so that I could do a 13:26:29
17 thorough survey of the literature. 13:26:33
18 Q. So having just talked about 13:26:35
19 this, do you still agree with your 13:26:41
20 statement on page 71 that the Arizona 13:26:43
21 matter is irrelevant to the claims of 13:26:46
22 this case? 13:26:48
23 A. My statement, if you read my 13:26:50
24 entire statement -- again, I'm a rebuttal 13:26:52
25 witness, and my job was to rebut 13:26:56

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1 Mr. Schneier's claims regarding whether 13:26:58
2 Google's WAA and the SWAA disclosures 13:27:03
3 displayed dark patterns. And I point out 13:27:08
4 in this cell that Mr. Schneier, and the 13:27:12
5 burden is on Mr. Schneier, not me, to 13:27:16
6 show why Google's settlement in that case 13:27:19
7 is relevant to this case. 13:27:21

8 He has not done that and 13:27:24
9 that case was related to location 13:27:26
10 tracking and that has nothing to do with 13:27:28
11 this case. 13:27:32

12 Q. So your opinion is that 13:27:36
13 location tracking specifically has 13:27:37
14 nothing to do with this case? 13:27:39

15 MS. AGNOLUCCI: Object to form. 13:27:41

16 A. My opinion is that that case 13:27:44
17 was regarding a different matter. It may 13:27:47
18 have had to do with dark patterns, but 13:27:50
19 how it had to do with dark patterns was 13:27:52
20 different than how this case has to do 13:27:54
21 with dark patterns, but the cases are not 13:27:57
22 the same case. 13:28:01

23 And Mr. Schneier, whom I'm 13:28:02
24 rebutting, attempts to argue that, well, 13:28:06
25 Google was involved in this other matter 13:28:10